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SUBJECT: KENYA ELECTIONS: EAST AFRICAN COMMUNITY OBSERVATION MISSION

REPORT

1. On Saturday, January 12 the East African Community Observer Mission issued the following report on the Kenyan General Elections.

Begin text:

THE EAST AFRICAN COMMUNITY OBSERVER MISSION REPORT KENYA GENERAL ELECTIONS DECEMBER 2007

INTRODUCTION

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The following is the East African Community's Observer Mission Report covering the period immediately before the election, the polling day and the post election period.

The East African Community Observer Mission (the Mission) undertook the task pursuant to:  
-Article 3 of the Treaty for the Establishment of the East African Community (Treaty) which requires ??adherence to universally acceptable principles of good governance democracy, the rule of law, observance of human rights and social justice??.  
-Article 5(1) of the Treaty which provides for, ??widening and deepening cooperation among the Partner States in political, economic, social and cultural fields, research and technology, defence, security and legal and judicial affairs, for their mutual benefit.?

Further, the Electoral Commission of Kenya (ECK) extended an invitation to the East African Community (EAC) in accordance with Regulation 45(1) of the Presidential and Parliamentary Elections (Amendment) Act 2002

which provides that, ??the Electoral Commission may, at any election, accredit any individual, association, organisation or institution who or which is manifestly non-partisan to act as election observers??

OBJECTIVES

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The objectives for which the Mission was deployed are as follows:  
To ascertain whether the elections were free and fair and conform to principles of good governance and democracy in the region; To look out for best electoral practices that could be emulated in the region; and to widen and deepen cooperation between Partner States in socio-economic and political Affairs.

#### COMPOSITION OF THE MISSION

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The Mission consisted of East African Legislative Assembly (EALA) Members from Uganda and Tanzania as well as professional staff from the EAC Secretariat. The exclusion of Kenyan EALA Members is consistent with adopted practice that Members of the Mission should not participate in election observations in their own countries. The following are members of the Mission: NOTE: Names deleted for Brevity.

#### DEPLOYMENT

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The Mission deployed in all the eight provinces of the country. It is worth noting that the Mission could not deploy in all the districts in all the eight provinces because of logistical constraints. The Mission's liaison with other observer teams made it possible to have

NAIROBI 00000136 002 OF 005

a more comprehensive picture of the electoral process.

#### METHODOLOGY

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The Mission employed various methods in its work, including but not limited to:

Literature review; Review of media reports-radio, print and electronic; Meetings and interactions with various stakeholders; Attending briefings by the Electoral Commission of Kenya; Attending political campaign rallies; Focus Group Discussions with different stakeholders; Face to face interviews; Use of questionnaires.

#### PRE- POLLING DAY OBSERVATIONS

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Generally a relatively calm environment prevailed despite some isolated incidences of violence some of which resulted in loss of life and destruction of property.  
-High voter registration as evidenced by the ECK statistics.  
-Extensive coverage of the electoral process by both public and private local media as well as regional and international ones.  
-Campaign rallies attended by the Mission were largely peaceful.  
-Political parties adhered to regulations regarding the conclusion of election campaigns.  
-The political parties exhibited varying states of un-preparedness triggered off by re-alignment of political parties and party affiliation during the primaries.  
-Persistent reports of allegations of abuse of public resources by the ruling party during the campaigns.  
-A pervasive atmosphere of suspicion of possible vote rigging.

- To the disadvantage of some presidential candidates; the public media covered only three of the nine presidential contestants.
- There were incidences of political intimidation at various polling stations throughout the country.
- The constitutional provision that requires a presidential candidate to also win a parliamentary seat, inter alia, caused serious tension and anxiety in Lang'ata.

#### POLLING DAY OBSERVATIONS

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- High voter turn out and few registered cases of spoilt and rejected ballots indicated sufficient civic and voter education.
- Timely dispatch of voting materials, and sufficient presence of electoral staff at the Polling stations facilitated an orderly voting exercise.
- Commendable efforts were made to extend assistance to special groups, including mothers with children, pregnant mothers, the disabled, the elderly and the illiterate.
- The ECK officials exhibited good conduct throughout the voting process.
- The availability of a Black Book was very useful in cases where voters' names were missing in voter register.
- Electoral Observers received cooperation by all the stakeholders including the Electoral Commission, political parties and the voters;
- There was good cooperation among party agents at the polling stations.
- The polling day activities were extensively covered by local, regional and international media;
- Electoral officials appeared to be conversant with rules of procedures on closing and counting;

NAIROBI 00000136 003 OF 005

- Counting took place openly in the presence of candidates' agents, observers and monitors
- The Mission noted that women were fairly represented in the ECK structures.
- The Mission noted that small and crowded classrooms used as voting stations compromised voter secrecy.
- Arrangement of voting in alphabetical order caused some confusion and unnecessary delays;
- Voter assistance in some cases compromised voter secrecy.
- Missing names in the register and black book disenfranchised some voters.
- In a number of areas, voting had an ethnic bias, resulting in ethnic minority voters being disadvantaged.
- Lack of a time frame within which election results were to be announced caused anxiety, tension and speculation.
- In some areas mounting of road blocks by vigilantes caused inconvenience to voters and other stakeholders.
- Sorting of ballot papers in the counting process was not properly structured in some areas and thus contributed to delays.
- The ECK used opaque ballot boxes instead of transparent ones.
- In some cases campaign posters of candidates were observed within the prohibited radius of polling centres
- The practice of interviewing political leaders within the confines of polling stations, after they had voted, breached electoral regulations.

## COLLATION, TALLYING AND ANNOUNCEMENT OF THE ELECTION RESULTS

- Tallying was done in the presence of party and candidates' agents;
- Form 16A had to be signed by all parties and candidates' agents for purposes of authenticating the results.
- Announcement of results at polling station level reflected transparency;
- The Mission noted with concern, the slow process of collation and tallying of the Presidential results, led to heightened tension in several parts of the country leading to violent riots;
- Delayed relaying of results from strongholds of one of the Presidential candidates fuelled speculation and fear that results were tampered with:
- Some parties raised concern regarding the mode and timing of electing ECK Commissioners;
- Concerns were raised about impartiality of the judiciary and expediency of handling election petitions within a specific time frame.
- The ECK Chairman exhibited no control over the process of tallying and announcement of results.
- A number of utterances made by the ECK Chairman cast doubt on the integrity and credibility of the Commission.
- The ECK Chairman displayed incompetence and weakness in the final management of the electoral process.

## POST ELECTION

The Mission observed the following:

- Escalation of riots in several provinces in the nation;
- increased loss of life;
- There is a growing number of Internally Displaced Persons and an influx of refugees into Partner States;
- Destruction of property and looting;
- The ethnic dimension continues to bedevil the society;
- The goodwill exhibited by the different initiatives towards mediation.
- Far reaching negative socio-economic consequences to Kenya and Partner States.

## CONCLUSION

An election is a process that involves a number of stages namely gazetting of the election period, nominations, campaigns, civic and

NAIROBI 00000136 004 OF 005

voter education, polling, counting of votes, tallying, announcement and declaration of results. The whole process is conducted within the national legal framework that is to say the constitution, the presidential, parliamentary, civic laws as well as regulations. The

above process can be categorized into three main stages namely pre-polling phase, polling day and post polling period.

The Pre-Polling Phase was initially characterized by an atmosphere of tension, suspicion, and some incidences of violence in different parts of the country. Different stakeholders condemned the violence and subsequently the environment changed into a relatively conducive atmosphere for continued campaigns until the polling day. In spite of the initial challenges, this stage can be considered to have been generally successful.

Notwithstanding some shortfalls, Polling Day was characterized by a high voter turnout, good performance by the electoral officials,

which  
led to a peaceful and transparent voting process. In most cases the  
counting and announcement of results at the polling centres was  
concluded well.

The Mission commends the role played by the media in covering and  
relaying information regarding the entire electoral process in a  
timely  
manner. The Media's role was critical on the polling day where they  
regularly kept the public informed about electoral developments.  
This  
is a best practice that should be emulated by Media houses in the  
region.

The Post Polling Period was characterized by uncoordinated and  
suspect  
actions, which include among others statements by the Chairman of  
the  
ECK to the effect that he could not trace some of his Returning  
Officers who had disappeared with the results and had switched off  
their phones. In addition, he also stated that he would declare the  
results with or without the returns, which he didn't do.

The delay in the announcement of the results plus the shortcomings  
mentioned above resulted in gross mismanagement of the tallying  
process  
and declarations of the Presidential results. This critically  
undermined the credibility of the final stage of electoral process.

The EAC Mission strongly commends the people of Kenya for the high  
voter turnout, their enthusiasm and commitment to the process,  
respect,  
hospitality and cooperation accorded to the Observer Missions. In  
the  
same vein, the Mission condemns the resultant violence and deeply  
regrets the senseless loss of life and property.

#### RECOMMENDATIONS -----

- The Mission calls upon the Summit to review the state of peace,  
security and good governance in Kenya as mandated by Article 11(3)  
of  
the EAC Treaty.
- The Mission urges the Summit to take an active role and be at the  
forefront of the process towards a just and lasting solution to the  
crisis.
- The Mission commends the initiatives that have been made towards  
there  
solution of the ongoing political conflict and all efforts to  
support  
this initiative are encouraged.
- The EAC should establish a regional mechanism to prevent, manage,  
resolve disputes and conflicts and common mechanisms for the

NAIROBI 00000136 005 OF 005

- management  
of refugees in the Region as per Chapter 23 of the Treaty;
- The fundamental principle in the Treaty which requires adherence to  
principles of good governance should be underpinned by enactment of  
a  
uniform electoral law and establishment of an East African Electoral  
Commission.
  - The East African Community should develop a civic education  
programme  
that addresses potential challenges of ethnic and tribal tensions  
within the region.
  - Excessive use of force in dealing with protestors should be

discouraged.

-Those involved in perpetration of political crime and killings should be prosecuted.

-The anomalies cited in the tallying process should be investigated and the ECK Officials and any other persons found to be responsible should be held accountable.

Electoral legal reforms in Kenya should encompass the following:

-Provision of a time limit within election results should be announced;

-Provision of a specific time-frame within which electoral petitions are disposed of;

-Use of transparent ballot boxes;

-Clarity on qualifications for presidential victory;

-Appointment of the Judiciary;

-Appointment of ECK Officials;

-Use of public resources during campaigns;

-Clarity on powers, authority and autonomy of the ECK.

Political Party leaders should prevail over their supporters to stop violence and engage in collective dialogue for the resolution of the crisis.

The Mission urges Kenyan citizens to appreciate the need for unity in diversity even at this critical point in their nation's history.  
END TEXT.

RANNEBERGER